

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARGARET-ILENE PULLEN,

Plaintiff,

v.

A. BIGGAR, H PICKARD, et. al.,

Defendants.

Case No. 3:18-cv-00015-MMD-WGC

**REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Plaintiffs' Application to Proceed in Forma Pauperis (IFP) (ECF No. 1) and pro se filing which she has titled an Appeal and notes a Nevada Supreme Court Case Number 72876. (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
2 particularity, definiteness and certainty.”” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
3 (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not “be
4 absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
5 335 U.S. 331, 339 (1948).

6 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
7 therefore, the application should be granted.

II. SCREENING

9 | A. Standard

10 “The court shall dismiss the case at any time if the court determines that ... the action or
11 appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or
12 (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
13 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed IFP, whether or not the plaintiff is
14 incarcerated. *See Lopez*, 203 F.3d at 1129; *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001)
15 (per curiam).

16 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
17 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks
18 that language. Thus, when reviewing the adequacy of a complaint under 28 U.S.C. §
19 1915(e)(2)(B)(ii), the court applies the same standard as is applied under Rule 12(b)(6). *See*
20 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a
21 plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is
22 the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”).
23 Review under 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of
24 America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

25 In reviewing the complaint under this standard, the court must accept as true the
26 allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts
27 in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted).
28 Allegations in pro se complaints are "held to less stringent standards than formal pleadings drafted

1 by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks and citation
 2 omitted).

3 A complaint must contain more than a “formulaic recitation of the elements of a cause of
 4 action,” it must contain factual allegations sufficient to “raise a right to relief above the speculative
 5 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain
 6 something more … than … a statement of facts that merely creates a suspicion [of] a legally
 7 cognizable right of action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice & Procedure* §
 8 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state “enough facts to state a
 9 claim to relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662,
 10 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
 12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
 13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
 14 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiffs’ Complaint**

16 As indicated above, Plaintiff’s initiating document is titled an “Appeal” and she cites a
 17 Nevada Supreme Court Case Number 72876. (ECF No. 1-1 at 1.) Beyond that Plaintiff states that
 18 she is a “Suri Juris and Secure Party Creditor” and goes on to make recitations regarding the
 19 Declaration of Independence and proof of her “nativity” and attaches a document she titles “Patent
 20 of Nativity.”

21 The court performed an online search of the Nevada Supreme Court’s records which
 22 reveals Plaintiff had filed an appeal from a case where Biggar and Pickard were granted summary
 23 judgment. The Nevada Supreme Court issued a remittitur of the finding that Pullen “failed to
 24 provide cogent argument challenging the grounds on which summary judgment was granted to
 25 Biggar and Pickard.” As such, the grant of summary judgment was affirmed.

26 It is not clear whether Plaintiff is attempting to appeal that determination in the United
 27 States District Court for the District of Nevada, but in any event, Plaintiff provides no factual
 28 allegations and instead includes a variety of statements that lack any detail. Similar to another

1 action filed by Plaintiff in this court, 3:16-cv-00551-RCJ-WGC, the undersigned recommends
2 dismissal with prejudice of this action because it fails to state a claim upon which relief may be
3 granted.

4 **III. RECOMMENDATION**

5 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

6 (1) **GRANTING** Plaintiffs' IFP application (ECF No. 1). Plaintiffs are permitted to
7 maintain this action without the necessity of prepayment of fees or costs or the giving of security
8 therefor. This order granting IFP status does not extend to the issuance of subpoenas at government
9 expense.

10 (2) Directing the Clerk to **FILE** the complaint (ECF No. 1-1); and

11 (3) **DISMISSING** the complaint **WITH PREJUDICE** for failing to state a claim upon
12 which relief may be granted.

13 Plaintiffs should be aware of the following:

14 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
15 this Report and Recommendation within fourteen days of receipt. These objections should be titled
16 "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by
17 points and authorities for consideration by the district judge.

18 2. That this Report and Recommendation is not an appealable order and that any notice of
19 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
20 until entry of judgment by the district court.

21 DATED: January 31, 2018.

William G. Cobb
22 WILLIAM G. COBB
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28